

# **JOINT COMMITTEE ON ADMINISTRATIVE RULES**

ILLINOIS GENERAL ASSEMBLY

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REP. LOU LANG  
REP. DAVID R. LEITCH  
REP. DAVID MILLER  
REP. ROSEMARY MULLIGAN

## **MINUTES**

**October 10, 2007**

### **MEETING CALLED TO ORDER**

The Joint Committee on Administrative Rules met on October 10, 2007 at 11:00 a.m. in Room C-1 of the Stratton Office Building in Springfield.

Co-Chair Hassert announced that the policy of the Committee is to allow only representatives of State agencies to testify orally on any rule under consideration at Committee hearings. Other persons are encouraged to submit their comments in writing.

### **ATTENDANCE ROLL CALL**

X Senator Bradley Burzynski	X Representative John Fritchey
X Senator James Clayborne, Jr.	X Representative Brent Hassert
X Senator Maggie Crotty	X Representative Lou Lang
X Senator Randy Hultgren	X Representative David Leitch
X Senator Dan Rutherford	X Representative David Miller
Senator Ira Silverstein	X Representative Rosemary Mulligan

### **APPROVAL OF THE MINUTES OF THE PREVIOUS JCAR MEETING**

Representative Leitch moved, seconded by Representative Mulligan, to approve the minutes of the September 18, 2007 meeting. The motion passed unanimously.

### **REVIEW OF AGENCY RESPONSE TO FILING PROHIBITION/SUSPENSION**

***Department of Central Management Services – Standard Procurement (44 Ill. Adm. Code 1; 30 Ill. Reg. 19577)***

Senator Rutherford moved, seconded by Representative Fritchey, that JCAR lift its Filing Prohibition against this rulemaking, conditioned on CMS' agreement to withdraw the rulemaking. The motion passed on a rollcall vote of 11-0-0.

***Department of Financial and Professional Regulation – Supplemental Reports for Accident and Health Insurers (50 Ill. Adm. Code 937; 31 Ill. Reg. 10699) (Emergency)***

Senator Rutherford moved, seconded by Representative Mulligan, that JCAR lift its Suspension of the emergency rule, conditioned on DFPR's agreement to file an emergency repealer of this emergency rule. The effective date of the Committee's withdrawal is the effective date of the emergency repealer of the emergency rule. The motion passed on a rollcall vote of 11-0-0.

## **REVIEW OF AGENCY RULEMAKINGS**

### ***Department of Children and Family Services – Department of Children and Family Services Scholarship Program (89 Ill. Adm. Code 312; 31 Ill. Reg. 9699)***

Senator Crotty, seconded by Representative Lang, moved that JCAR and DCFS agree to extend the Second Notice Period for the rulemaking for an additional 45 days so that DCFS can respond to JCAR questions. The motion passed unanimously.

Representative Hassert asked if any member desired to remove any rulemaking from the No Objection List. Representative Miller and Representative Leitch each asked to discuss rulemakings by the Department of Financial and Professional Regulation.

### ***Department of Financial and Professional Regulation – Schedules of Maximum Rates to be Charged for Check Cashing and Writing of Money Orders by Community and Ambulatory Currency Exchanges (38 Ill. Adm. Code 130; 31 Ill. Reg. 8891)***

Representative Miller, seconded by Representative Fritchey, moved that this rulemaking be removed from the No Objection list.

Brent Adams, Acting Director of the DFPR Division of Financial Institutions, represented the agency.

Representative Miller asked how DFI had decided to propose this fee increase.

Director Adams stated that the last time the State had approved a fee increase was 1997. The rules specify a complex process for how a fee increase is determined. It starts with the industry filing a petition. That petition was allowed, and hearings were scheduled in March. Rules require a hearing to be scheduled in both Springfield and Chicago. In Chicago, members of the industry and the Lt. Governor testified. No one indicated an interest to testify in Springfield, so that hearing was cancelled. The Department then prepared a statement of findings and proposed the rulemaking. DFI received no comments during First Notice.

Representative Miller asked what specifically the industry proposed.

Director Adams responded that the industry proposed an increase to the Department, but the Department then proposed a lesser increase in its rulemaking.

Representative Miller stated that his concern was particularly for the proposed change from \$500 to \$100 in the threshold at which the higher rate is applied.

Director Adams said the change was to maintain the incentive for currency exchanges to process checks for less than \$100. The cost of banking fees and labor for cashing a \$20 check could make offering this service not profitable for currency exchanges (CEs). The industry originally proposed a charge for checks up to \$100 of 1.4% plus \$1 plus an annual CPI adjustment; for checks over \$100, they recommended a fee of 2.75% plus CPI. DFI proposed no CPI adjustments and a fee for the higher tier checks of 2.25%. He pointed out that, on some checks, the rate would actually decrease. For example, a \$100 check would cost less; a check for less than \$100 would experience a 10¢ increase.

Representative Lang asked if DFI reached out to any community groups to see if they were interested in testifying.

Director Adams responded that he had done so. No one said they wanted to testify, and no one submitted any First Notice public comment.

Representative Lang asked what was the substance of the Lt. Governor's objection.

Director Adams stated that there were 2 major components. One involved CEs taking utility payments. The Lt. Governor believed that, until the controversy involving the ComEd rate increase is resolved, it is inappropriate for CEs to profit off that rate increase through the fees they charge for taking utility payments. He also believes this industry should not be subsidized; it is a business and should compete just like everyone else.

Representative Lang asked if anyone had pointed out to the Lt. Governor that not every business has its fees controlled by the State.

Director Adams said he believes the industry pointed that out.

Representative Mulligan pointed out that the fee being charged for cashing checks over \$100 is roughly twice that of cashing a check under that amount. She asked how the industry justifies that approach.

Director Adams said the industry maintains that about 40% of the industry is currently failing, i.e., it is taking no profit whatsoever. The average profit across the industry is about 7%. Statute requires that DFI set the rate so that the industry takes a "reasonable profit" from its check cashing services. The industry maintained that a reasonable profit would be 11.8% to 28.7%. DFI determined that the average profit to be achieved under this rule change would be 21%, but even that would not make all the CEs profitable.

Representative Mulligan pointed out that CEs don't make all their profit on check cashing.

Director Adams agreed, stating that 67% of CE revenue stems from check cashing.

Representative Mulligan asked how a CE collects when a check bounces.

Director Adams responded that this kind of loss is built into the fee calculation.

Representative Mulligan asked how much is ultimately uncollectible and pointed out that collection fees vary based on the amount of the bad check. She doesn't understand why there is such a large difference between the fees for cashing a small check and the fees for a large check. Is a smaller check more likely to bounce?

Director Adams said smaller checks are not particularly more likely to bounce. The rate differential is because the overhead cost of cashing a smaller check is such that it is not feasible for CEs to offer that service. The demarcation between small and large checks is being lowered to encourage CEs to continue to handle small checks. In the event of a bounced check, the CE may have to file a claim on its bond to recover the money, resulting in a cost to the CE.

Representative Mulligan asked if checks are being verified before cashing.

Director Adams stated that checks are being validated, especially higher checks like payroll checks. However, it costs to validate a check, partially explaining the higher rates applied to larger checks.

Representative Mulligan again asked how DFI justifies fees doubling for checks over \$100.

Director Adams explained that CE industry profitability analyses, which currently show an industry-wide profit of only 8.5%, are used, as are comparisons with other states' rates. Currently, only West Virginia rates are less than those charged in Illinois. With the new rates, only 4 states will charge rates less than Illinois.

Representative Mulligan asked if, when community groups were contacted about this rule change, they were told the level of the resulting rates.

Director Adams said he had made it clear that a rate increase would occur; he was not sure he specified the dollar amounts. He also suggested they check the website postings providing all the available information on this issue.

Representative Fritchey stated that the significant portion of this change is the lowering of the demarcation point from \$500 to \$100. For checks between \$100 and \$500, the rate is going from 1.4% to 2.25%. This is a 61% hike in the rate. The main effect will be on checks between \$100 and \$500. He would be interested in what percentage of a CEs check cashing business falls within this range.

Director Adams said he believed that information was provided as part of the industry's request, but he didn't have it with him.

Representative Miller asked if a different rate applies to State issued checks. He recalls that approach being proposed at one time, based on the low risk of such a check bouncing. He also assumes that a large number of State issued checks would fall within the \$100-500 range.

Director Adams stated that there is no rate differential. There was an attempt many years ago to create a lower rate for public aid checks, and he believes that JCAR rejected that proposal. Now public aid checks are a thing of the past because of the use of Link cards. Also, some risk is still assumed by the CE because the presenter of the check may not be the legitimate payee.

The motion to remove this rulemaking from the No Objection List passed on a rollcall vote of 10-0-0 (Clayborne – not present). No further action was taken.

***Department of Financial and Professional Regulation – Supplemental Reports for Accident and Health Insurers (50 Ill. Adm. Code 937; 31 Ill. Reg. 10546)***

Representative Leitch, seconded by Senator Rutherford, moved that JCAR object to and prohibit filing of the rulemaking because the Department lacks specific statutory authority, under Section 136 of the Insurance Code, to require the submission of quarterly reports of information such as CPT codes, particularly with the aim of regulating the insurance marketplace and pricing, rather than examining the financial solvency of insurance carriers. The Committee finds that this lack of specific statutory authority constitutes a serious threat to the public interest.

The agency was represented by Michael McRaith, Director of the DFPR Division of Insurance. The Director stated that this rulemaking is about the collection of data from health insurance companies. DOI is not asking them to report quarterly CPT codes. If somebody has said that, they have lied. DOI is asking for a one sheet report that contains information that insurance companies track on a daily or weekly basis. The one sheet report will ask how much premium was collected; how much was paid in claims; how much of the premium was collected from new business; what is the ratio of claims paid vs. premium collected; how many employer groups, individuals and dependents are covered; how many member months are insured; and how much in dollar amount is provided for wellness. There is not one CPT code mentioned on the document. DOI took comments expressed by JCAR at the September meeting and integrated some of those comments into this proposal. The agency heard from industry opponents, and their suggestions that did not eviscerate this rule were also incorporated. DOI replied to industry concerns in a letter that is also being presented to JCAR. DOI was able to proceed with this proposed rulemaking this month, as the Director said they would when he appeared last month, because of the professional and capable assistance of the JCAR Staff. DOI is asking for basic data every health insurance company tracks on a weekly, if not daily, basis. The insurance industry touts Illinois as a great state because it doesn't regulate insurance rates, meaning that it doesn't approve the rates before they can be applied. It is not known, however, whether the health insurance market in this State is working or has failed. Illinois has more uninsureds and underinsureds. A recent American Cancer Society ads promotes the need to fight for "adequate" coverage, not just any kind of insurance. The Kaiser Family Foundation study the Director referred to last month shows that premiums increased last year by an average of 6.1%, not because costs declined, but because coverage benefits declined. People are purchasing less coverage. One-half to one-third of all personal bankruptcies are filed because of medical expenses. Three-fourths of those families have health insurance. Illinois does not regulate rates. It also doesn't collect this one page of basic information. This is an embarrassment. DOI doesn't know how many policies one insurer issues in a given line of health insurance. It doesn't know which companies pay which claims better than others. It doesn't know which companies

encourage their customers to participate in wellness programs. It doesn't know how much market share one company has vs. another. This is an acute information deficit. It harms our ability to regulate. It impairs legislators' ability to understand what is happening in this State and to evaluate whether the information they get from the insurance industry and consumer groups is accurate. It is an embarrassment. Individual and group health insurance consumers don't know whether they are spending their money wisely. DOI does know that some of the largest insurance companies in this State have delivered record profits to their shareholders, with tens of millions of dollars paid to their officers. One company paid over \$2 billion to its CEO over 9 years. Illinois and Texas are the only 2 of the 10 largest states that don't have a nonprofit health insurance industry. At a time of heightened scrutiny and regulation of health insurance in this country by Congress and by states as close as Michigan, Wisconsin, Ohio, Pennsylvania and Iowa, Illinois is not even collecting the most basic data. Some have said DOI doesn't have the authority to do this, and that is a flat out misrepresentation. It is ironic that someone would argue in favor of a free market at the same time arguing that we shouldn't collect the data to determine if this free market is even working. The Director offered several statutory citations. Section 136 of the Insurance Code: The Director has the right to require the production of annual and supplementary reports. It is by virtue of this authority that all domestic health insurance companies in this State already file quarterly reports. Section 401: The Director of Insurance has the authority to make rules and regulations necessary to effectuate the laws of the State, conduct examinations and investigations, and to take whatever actions the Director believes are appropriate to enforce the laws of this State. Section 132: The Director has the power to examine all non-financial business practices of insurance companies in this State. Section 132.3: The Director may conduct market conduct exams of any insurance company in this State. In doing that, DOI is supposed to evaluate market share. It doesn't know market share in the health insurance industry right now because it doesn't have the authority, or it has not collected, by virtue of rule, the information it needs. Insurance companies are already producing quarterly reports. DOI wants one page of additional information. The Adequate Health Care Task Force asked DOI to generate and study this information. DOI has the authority. It is asking for information these companies provide in virtually every other state. Illinois cannot choose to be ignorant of this information.

Representative Fritchey stated that some of the JCAR members are supportive of DOI getting the information it is seeking. At the same time, they have concerns about statutory authority. A climate has been created in which this Committee is going to be very wary of the rulemaking process being used to effectuate what should have been approved via the legislative process. Even if we support those goals, we have to be mindful of the process. Representative Fritchey supports most of what DOI is attempting to achieve. The industry says it is willing to give DOI most of this information. DOI and others are going to be held to a very strict construction of what is statutorily authorized. Unfortunately, policy issues are getting intermingled with procedural issues. Statute clearly gives DOI the authority to require information designed to determine the solvency of health insurance companies, but there is a question as to whether that authority is as broad as DOI would like to depict it.

Director McGraith responded that the Committee should want the Director of Insurance to have this kind of authority, and again offered to provide a list of about 20 statutory citations that would support the DOI interpretation of its authority. When Illinois citizens have paid their

premiums for years, never filing a claim, but eventually get sick and find that their claims aren't getting paid, they file complaints with DOI. When DOI gets a number of complaints, it investigates that company right away. The General Assembly should want DOI to have that authority.

Representative Fritchey pointed out that the authority to investigate complaints and take action against a company is not in question.

Director McGraith added that when DOI conducts these exams, as it has about 25 times in this last year, it needs to know about market share. It doesn't even know how many policyholders they have, how many claims they've paid, or what is their claims/loss ratio for a quarter. DOI is operating in the dark, based on information it gets from consumers, rather than proactively collecting this information so it will be informed. DOI is not talking about regulating pricing. It is talking about very basic information health insurance companies should be required to supply on a quarterly basis.

Representative Fritchey stated that, obviously, what DOI is now looking for is broader than what it has asked for in the past or else it wouldn't be proposing this rulemaking.

Director McGraith responded that it's not broader, but rather more specific. The industry doesn't want to provide this information because it doesn't want the State to know that when it collects a dollar from an Illinois citizen, 40 cents goes to administration, overhead and profit, while 60 cents "might" go to the payment of claims. That is the kind of information this one page will provide.

Representative Mulligan stated that, while she personally supports this gathering of information, it comes down to whether statute currently authorizes data collection to determine solvency or whether it authorizes a broader range of data collection. When statute creates a gray area like this, the statute needs to be clarified. On a variety of policies the Governor is hoping to accomplish, a legislative package is needed before rulemaking.

Director McGraith responded that this issue of authority has arisen between the September and October JCAR meetings. He reiterated his view that anyone who is saying DOI does not have adequate authority to collect this data is misinformed. The health insurance issue is not going to go away. DOI is going to collect this information. If it has to collect it individually through data calls on individual companies, that is what it will do.

Representative Leitch stated that the issue here is vagueness in the statute that is resulting in legislating by rule. JCAR is saying that in this instance, and perhaps in others to come, these matters should be clarified by the General Assembly. The principle at stake here is the separation of powers and JCAR's institutional responsibility to protect the General Assembly's role in the process. Representative Leitch additionally pointed out that there is nothing that prohibits voluntary submission of this information by the industry. Many companies are likely to comply on a voluntary basis.

Director McGraith reiterated his points about Illinois' information deficit. He pointed out that while legislators deal with many different issues, DOI is all about insurance regulation. Its employees have many years of experience. The DOI general counsel is one of the best regarded insurance department general counsels in the nation, and he believes DOI has authority to do this. No statute says domestic insurance companies have to file quarterly, yet they currently do so.

The motion passed on a rollcall vote of 9-1-0 (Crotty – No; Clayborne – not present).

### **CERTIFICATION OF NO OBJECTION**

Senator Crotty moved, seconded by Representative Leitch, that the Committee inform the agencies to whose rulemakings the Committee did not vote an Objection, or did not remove from the No Objection List, that the Committee considered their respective rulemakings at the monthly meeting and, based on the Agreements for modification of the rulemakings made by the agencies, no Objections will be issued. The motion passed unanimously.

### **NOVEMBER MEETING DATE**

Co-Chair Hassert announced that the next meeting was scheduled for Tuesday, November 13, 2007, 10:30 a.m., Room 16-503, James R. Thompson Center, Chicago IL.

### **ADJOURNMENT**

Senator Hultgren moved, seconded by Representative Miller, to adjourn the meeting. The motion passed unanimously.

*Min:0710Oct*